credible that she should have been paid nothing although all the other persons connected with the business were paid.

Lord Rutherfurd Clark—I agree in thinking that the judgment should be affirmed on the grounds which the Sheriff has assigned. If I thought that this was a just debt due by the father to his daughter I should hold that the case of *Thomas* v. *Thomson* applied, and I should feel myself bound to give effect to it, not only out of respect to the decision, but out of respect to the repeated approval of it in subsequent cases. Nor do I see in any of the circumstances of this case any fraud on the other creditors beyond what was there held not to be fraud. But while that is so, I think that in a case of this kind it is incumbent on the person who has received payment of the alleged debt in such circumstances to show clearly that the debt is due. I mean that a person who has received payment of a sum from an insolvent person, knowing him to be insolvent, must show clearly that the debt is an honest one, otherwise the payment will not be sustained. We have not here anything like sufficient proof. We have the statement by the father of his daughter's employment, and that is corroborated by the son. But it is necessary to prove more than that the debt subsisted at the time. It must also be proved that although the daughter was hired she never received a farthing in payment of wages. It is impossible to believe that if this relation was indeed ever established it was ever acted on. I am therefore very clearly of opinion that there is no sufficient proof of the existence of the debt in respect to which the payment was made. I therefore think that the Sheriff should be affirmed. I can see that I am bound to follow the case of *Thomas*, but I am not sorry to see your Lordships inclined to depart from it.

Lord Young was absent.

The Court affirmed the judgment of the Sheriff.

Counsel for the Appellant—Goudy—A. S. D. Thomson. Agent—Walter R. Patrick.

Counsel for the Respondent—Sir C. Pearson—Kennedy. Agent—Gregor Macgregor, W.S.

Thursday, January 26.

FIRST DIVISION.

[Exchequer Cause—Lord Fraser.

THE LORD ADVOCATE *v.* DUKE OF BUCCLEUCH.

Revenue—Succession Duty Act 1853 (16 *and* 17 *Vict. c.* 51), *sec.* 21—*Value of Unlet Shootings.*

The Succession Duty Act of 1853 provides, by sec. 21, that "the interest of every successor, except as herein provided, in real property, shall be considered to be of the value of an annuity equal to the annual value of such property." *Held* that under this section succession duty was payable upon the value of unlet shootings.

This was an action at the instance of the Lord Advocate, on behalf of the Commissioners of Inland Revenue, against the Duke of Buccleuch and Queensberry, concluding for payment of £606, 1s 4d., the amount of the first, second, third, fourth, fifth, and sixth instalments of the succession duty alleged to be payable by the defender in respect of the value of unlet shootings on landed estates in Scotland to which, or the income thereof, the defender became beneficially entitled as successor on the death of his father on 16th April 1884, with interest at the rate of 4 per cent. on each of the said six instalments of succession duty from the dates at which they respectively fell due.

The pursuer averred that the annual value of these shootings, as shown by the valuation roll at the date when the defender succeeded, was £6815, 5s. 7d., and that they formed part of the value of his succession. The pursuer further averred—"By section 21 of the Succession Duty Act of 1853 (16 and 17 Vict. c. 51) it is provided that the interest of every successor in real property shall be considered to be of the value of an annuity equal to the annual value of such property, payable from the date of his becoming entitled thereto, and every such annuity shall be valued according to the tables in the schedule annexed to the Act. The defender was fifty-two years old at the time the succession opened to him, and according to Table I annexed to the Act the value of an annuity of £6815, 5s. 7d. sterling, for the life of a person of that age is £80,808, 15s. 3d. sterling. The succession duty thereon, at the rate chargeable, 1 per cent., is £808, 1s. 9d. sterling. That duty, in terms of section 21, is payable by eight half-yearly instalments, the first being payable at the expiration of twelve months next after the date of the late Duke's death, and the remaining instalments at intervals of six months each thereafter. The first six instalments are already past due, having been respectively payable at the dates mentioned in the summons."

The defender averred that the shootings of the Buccleuch and Queensberry estates had never been let prior to his succession, and that consequently they had yielded no income or profits, and that this was the first claim which had been made for payment of succession duty upon the value of unlet shootings.

The pursuer pleaded—"(1) The annual value of the unlet shootings ought to be taken into account in ascertaining the value of the interest to which the defender became entitled on succeeding to his father in the said estates."

The defender pleaded—"(1) The pursuer's statements are irrelevant and insufficient in law to support the conclusions of the summons. (2) The defender should be assoilzied, in respect that the said shootings were yielding no annual income when he succeeded, and had not previously been let."

On 12th January 1888 the Lord Ordinary (Fraser) repelled the first and second pleas for the defender, and granted leave to reclaim.

"*Opinion.*—It was stated at the debate that this is the first case in which a claim for succession duty on unlet shootings has been made the subject of judicial discussion in Scotland, though the Revenue Department have been in use to make the claim and have exacted the

duty, and it was also stated, and not contradicted, that such claims have been made and regularly sustained in England. The whole question turns upon the construction of the 21st section of the Succession Duty Act of 1853, which is in the following terms, so far as bearing upon the point here raised:—'The interest of every successor, except as herein provided, in real property, shall be considered to be of the value of an annuity equal to the annual value of such property.' The fact that by the Act 49 Vict. c. 15, unlet shootings must now be valued and enter the valuation roll has no bearing upon the question as to the liability for succession duty under the Act of 1853. The Valuation Act and the various amendments upon it were all subsequent to the Succession Duty Act, and consequently the only matter here to be determined is the construction of the 21st section of the latter Act. The defender admits that a proprietor cannot escape liability for duty merely by allowing his lands to go to waste. But, on the other hand, it is said that if he makes a reasonable use of his property, and if by such reasonable use no annual income is returned, then there is no liability. At the time when the succession here opened none of the shootings of the Duke of Buccleuch were let; they were all in his own hands, but how he disposed of the game there is no averment on the one side or the other. It must be assumed therefore in the Duke's favour that all the game obtained on the land was disposed of without pecuniary return therefor. And, taking the case upon that footing, what does it come to? He is the owner of property which admittedly has annual value, and such being the case, it comes within the very words of the Act of Parliament. The only case relied upon by the defender as bearing upon the question was that of the *Attorney-General* v. *Sefton*, 2 Hurlst & Colt, 362, 11 (H. of L. Cas.) 257, but the answer is that in that case it was admitted that there was no annual value derivable from the property, which is not the case here."

Argued for the reclaimer — The question turned upon the meaning of the words "equal to the annual value of such property" in sec. 21 of the Succession Duty Act of 1853. If an ordinary and legitimate use of the lands was made, and there was no annual income, then no duty was exigible —*Lord Advocate* v. *Marquis of Ailsa*, October 28, 1881, 9 R. 40.

Argued for respondent—The shootings were part of the succession; they enhanced the value of the lands, and the valuation roll supplied a fair estimate of the rent which could have been obtained. The value of unlet shootings was taken into account in estimating provisions to widows and children under the Aberdeen Act—*Leith* v. *Leith*, June 10, 1862, 24 D. 1059; *Macpherson* v. *Macpherson*, May 24, 1839, 1 D. 794, and 5 Bell's App. 280; *Menzies* v. *Menzies*, March 10, 1852, 14 D. 651.

At advising—

LORD PRESIDENT—I cannot find any grounds for doubting that the Lord Ordinary has come to a right conclusion upon this case. The 21st section of the Act provides that "the interest of every successor, except as herein provided, in real property, shall be considered to be of the value of an annuity equal to the annual value of such property." Now, the words which we have to construe are "annual value of such property." All the rest of the clause is quite plain, and the question which we have to decide is, whether the value of unlet shootings is to be taken into account and dealt with as part of such property.

If the question were entirely open it might afford material for a good deal of argument, but it appears to me that there is another class of cases which are conclusive of the present question. The cases of *Menzies* and *Leith* decide that in estimating the annual value of an entailed estate in order to fix the amount of locality lands, and of children's provisions under the Aberdeen Act, unlet shootings must be taken into account. In the case of *Leith* the words were "the free yearly value as aforesaid of the whole of the said lands," and here the words are "shall be considered to be of the value of an annuity equal to the annual value of such property." I cannot see any difference, and therefore hold these decisions to be not only applicable, but binding upon us.

LORDS MURE and ADAM concurred.

LORD SHAND was absent from illness.

The Court adhered.

Counsel for the Pursuer—Sol.-Gen. Robertson—Young. Agent—D. Crole, Solicitor of Inland Revenue.

Counsel for the Defender—R. Johnstone—Low. Agents—Gibson & Strathearn, W.S.

Friday, January 27.

FIRST DIVISION.

STOBIE'S TRUSTEES *v.* RONALDSON AND OTHERS.

Succession—Accretion—Residue.

A testatrix directed her trustees to realise the residue of her estate, and to pay over the free annual income thereof to her two sisters, equally between them, during their joint lives. In the event of either of them predeceasing her, or upon the death of either of them after her decease, the trustees were to pay over one-half of the income to the children of such sister equally, share and share alike, if more than one, during the lifetime of the survivor of the two sisters, and the other half to such survivor. The trustees were also directed, after the death of the longest liver of the sisters, or after the death of the testatrix, if they both predeceased her, to pay over and divide the whole free residue to and among the children of the sisters.

The testatrix was survived by both sisters, one of whom subsequently died leaving an only child. On the death of this child the surviving sister claimed the liferent of her one-half of the residue *jure accres-*